

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Koji Obata, et al.
Serial No. : 09/824,367
For : DATA MULTIPLEXER, DATA MULTIPLEXING METHOD,
AND RECORDING MEDIUM
Filed : April 2, 2001
Examiner : Tang, Karen C.
Art Unit : 2151
Confirmation No. : 7171

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(Name of person signing/transmitting)

Signature
April 15, 2008
Date of Signature

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action dated November 15, 2007 and the Advisory Action dated March 6, 2008, Applicants petition for a two-month extension-of-time, extending the period for response to April 15, 2008. Applicants enclose an electronic payment of \$460.00 as payment of the extension-of-time fee. Please consider the following remarks.

Applicants respectfully traverse the rejections.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS.

Claims 1 and 3-11 are pending. Claims 1, 3 and 4 are independent.

II. REJECTIONS OF INDEPENDENT CLAIMS UNDER 35 U.S.C. §112 AND §103(a)

Claims 1 and 3-4 were rejected under 35 U.S.C. §112, first paragraph, as allegedly having no support in the Specification for “wherein the first calculating means calculates the time division multiplexing cycle irrespective of the transport rate of said plurality of bit streams”.

Claims 1, and 3-4 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,561,466 to Kiriya (hereinafter, merely “Kiriya”) in view of Applicants’ Admitted Prior Art, (hereinafter, merely “AAPA”).

III. RESPONSE TO REJECTIONS

Applicants respectfully submit that support for “wherein the first calculating means calculates the time division multiplexing cycle irrespective of the transport rate of said plurality of bit streams” is provided throughout the Specification, specifically at page 20, equation (21), paragraph [0065], and Figure 3(C).

Applicants submit that the rejection of claims 1 and 3-4 is improper for at least three reasons set forth below.

Claim 1 recites, *inter alia*:

“A data multiplexer...comprising:

wherein the first calculating means calculates the time division multiplexing cycle irrespective of the transport rate of said plurality of bit streams,

...wherein said multiplexing means determines an order in which said plurality of bit streams are multiplexed on the basis of the data occupancy rate of said virtual data buffer calculated by said second calculating means." (Emphasis added)

1. First, the Advisory Action (see page 2) relies on paragraph [0066] of the Specification to reject wherein the first calculating means calculates the time division multiplexing cycle irrespective of the transport rate of said plurality of bit streams, as recited in claim 1. Specifically, the Advisory Action asserts that since paragraph [0066] of the Specification claims that the multiplexing cycle can be considered equivalent to a time to leak 188-byte data and since the AAPA discloses that the leaking time is calculated based only on data bytes and the leaking rate, therefore, the above-identified feature of claim 1 is disclosed by AAPA.

In response, Applicants respectfully submit that "since paragraph [0066] of the Specification claims that the multiplexing cycle can be considered equivalent to a time to leak 188-byte data" is one of the inventive features of this application. It is improper for the Advisory Action to use impermissible hindsight to reject the above-identified features of claim 1.

2. Second, the Advisory Action (see page 2) relies on Kiriya to reject wherein the first calculating means calculates the time division multiplexing cycle irrespective of the transport rate of said plurality of bit streams, as recited in claim 1. Specifically, the Advisory Action states that Kiriya calculates the time division cycle based on cell length and propagation delay information (rate of data into the packet-rate of data out of the packet). Applicants respectfully submit that the propagation delay information of Kiriya cited by the

Advisory Action shows a dependency of Kiriyaama's time multiplexing cycle on the transport rate. Applicants submit that this is distinguished from claim 1, which recites that the time division multiplexing cycle is irrespective of the transport rate of the plurality of bit streams. Thus, Kiriyaama fails to disclose this claimed feature.

3. Third, the Advisory Action (see page 2) relies on "priority" of paragraph [0034] and "overflow" of paragraph [0043] of AAPA to reject wherein said multiplexing means determines an order in which said plurality of bit streams are multiplexed on the basis of the data occupancy rate of said virtual data buffer calculated by said second calculating means, as recited in claim 1. Specifically, the Advisory Action states that since a TS packet has priority, as disclosed in paragraph [0034], and since occupancy rate is calculated to prevent overflow, as disclosed in paragraph [0043], the system of AAPA must determine the order of the occupancy rate to prevent overflow. Applicants respectfully submit that even assuming that the Advisory Action's statement is reasonable, AAPA merely determines the order of the occupancy rate, not the order of multiplexing. Applicants respectfully submit that the AAPA fails to disclose or teach determining an order in which said plurality of bit streams are multiplexed on the basis of the data occupancy rate, as recited in claim 1.

Furthermore, Applicants submit it is an improper interpretation of AAPA to ascribe functionality that is not disclosed. Indeed, the assertion that a system must determine the order of the occupancy rate is improper.

Therefore, Applicants submit that independent claim 1 is patentable.

For reasons similar to, or somewhat similar to, those described above with regard to independent claim 1, independent claims 3 and 4 are patentable.

IV. DEPENDENT CLAIMS

The other claims are dependent from one of the independent claims, discussed above, and are therefore believed patentable for at least the same reasons.


CONCLUSION

In view of the foregoing remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

Respectfully submitted,

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